STATE OF MICHIGAN

COURT OF APPEALS

ALLOS MARKET, INC.,

Plaintiff/Counter Defendant-Appellee,

v

HILANTO, INC.,

Defendant/Counter Plaintiff-Appellant.

UNPUBLISHED
February 8, 2007

No. 272112
Wayne Circuit Court
LC No. 05-532829-CK

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This dispute arises out of the interpretation of a purchase agreement for business assets and a lease. In 2002, plaintiff and defendant entered into an agreement for plaintiff to purchase business assets from defendant relating to a party store. Section 31 of the agreement included certain terms of a lease for the real estate and the following terms concerning an option to purchase the real estate: "**31.1** Option to purchase during the first twenty-four (24) months for ONE HUNDRED FORTY THOUSAND AND 00/100 ($140,000.00) DOLLARS cash."

On November 17, 2003, the parties closed on the sale of business assets, and a lease was included among the closing documents. The lease did not contain any provisions related to the option to purchase the real estate as was previously stated in the agreement. Defendant's prior attorney who handled the business transactions relating to the sale testified that, to his knowledge, there had been no changes to the terms of the agreement, and that when he prepared the closing documents, including the lease, bill of sale, closing statement, promissory notes, security agreement, financing statement, and agreement for reassignment of the liquor license, he missed the provision of the option to purchase the real estate.

Plaintiff sent a letter to defendant on October 31, 2005, stating that plaintiff was exercising its option to purchase pursuant to the agreement. When defendant would not sell the property (claiming that the lease was the final word concerning the real estate and it contained no option), plaintiff filed its complaint requesting specific performance on the agreement.

Following plaintiff's motion for summary disposition, the trial court granted its request for specific performance, finding that the parties had intended there to be an option to purchase in the closing documents.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 30; 651 NW2d 188 (2002). When reviewing a motion for summary disposition based on MCR 2.116(C)(10), this Court "considers all the evidence, affidavits, pleadings, admissions, and other information available in the record in the light most favorable to the nonmoving party . . . ." *Id.* at 30-31. Summary disposition is properly granted if no factual dispute exists, thereby entitling the moving party to judgment as a matter of law. *Id.* at 31.

The primary goal of contract interpretation is to honor the intent of the parties. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). Intent is found in the words used in the instrument. *Id.* Courts may not make a different contract or look to extrinsic testimony to determine intent when the contract language is clear and unambiguous. *Id.*

> The parol evidence rule may be summarized as follows: "(p)arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). This rule recognizes that in "(b)ack of nearly every written instrument lies a parol agreement, merged therein." *Lee State Bank v McElheny*, 227 Mich 322, 327; 198 NW 928 (1924).
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> However, parol evidence of prior or contemporaneous agreements or negotiations is admissible on the threshold question whether a written contract is an integrated instrument that is a complete expression of the parties' agreement. *In re Skotzke Estate*, 216 Mich App 247, 251-252; 548 NW2d 695 (1996). [*Id.* at 492.]

In this case, the deposition testimony of defendant's business attorney was properly considered by the trial court because it dealt with the threshold question of whether the lease was a complete expression of the parties' agreement. In that deposition testimony, the attorney stated that the lease was just one of many documents to be signed by the parties at the November 17, 2003, closing of the sale of business assets. That attorney also testified there were no negotiations to change the terms of the agreement, and the option to purchase as stated in the agreement had not been negotiated away. Additionally, the lease does not contain a specific merger clause or other provision stating that the lease was the full and integrated agreement of the parties.

Based on both the business attorney's deposition and the language of the lease itself, it is plain that the lease was not a complete expression of the parties' agreement, and therefore it did not extinguish all rights under the agreement.

"The promisee in an option contract holds the power to purchase the property at will for the specified price during the specified period." *Randolph v Reisig*, 272 Mich App 331, 339; ___ NW2d ___ (2006). Consideration for a contract requires the existence of a bargained for exchange. *GMC v Dep't of Treasury*, 466 Mich 231, 238; 644 NW2d 734 (2002). There must be a benefit to one side or a detriment to the other side. *Id.* at 238-239. "Courts do not generally inquire into the sufficiency of consideration." *Id.* at 239.

In this case, the option in the agreement specified a price of $140,000 and a time period of the first twenty-four months of the lease in which to exercise that option. The option was part of the overall agreement that contained many benefits and detriments to both parties. Plaintiff acquired certain assets (a detriment to defendant), and defendant received funds from plaintiff (a detriment to plaintiff). The option to purchase the real estate was part of the overall bargained-for exchange of the agreement. Accordingly, there was consideration for the option in the agreement, and the option between the parties was valid.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio